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IN THE

Supreme Court of the United States

October Term, 1964
No. 353

BURDWELL H. SHIPE and ARTHUR M. BELL, Administrator of the Estate of MADGE E. SHIPE, Deceased,

Appellants

vs.

THOMAS J. BRENNAN,

Appellee

On Appeal from the Supreme Court of Pennsylvania, No. 2 Mag Term, 1964.

BRIEF OF APPELLANTS IN OPPOSITION TO MOTION OF APPELLEE TO DISMISS THE APPEAL OR IN THE ALTERNATIVE TO AFFIRM THE JUDGMENT OF THE SUPREME COURT OF PENNSYLVANIA

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Case Caption

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BRIEF OF APPELLANTS IN OPPOSITION TO MOTION OF APPELLEE TO DISMISS THE APPEAL OR IN THE ALTERNATIVE TO AFFIRM THE JUDGMENT OF THE SUPREME COURT OF PENNSYLVANIA

On Appeal from the Supreme Court of Pennsylvania, No. , May Term, 1964

I. ARGUMENT

A. The Minimum Contacts To Sustain Substituted Service of Process Are Lacking

Appellee, in argument on his Motion To Dismiss the Appeal or in the Alternative To Affirm the Judgment of the Supreme Court of Pennsylvania, has argued that because appellants were residents of the Commonwealth of Pennsylvania at the time of the accident in suit, were licensed to operate a motor vehicle by the Commonwealth of Pennsylvania and had licensed the vehicle involved in the accident in the Commonwealth of Pennsylvania, the Commonwealth had those "minimum contacts" with Appellants sufficient to sustain personal jurisdiction by substituted service. It is respectfully submitted that Appellee is incorrect in this position and that no decision of this court or of any other appellate tribunal has held otherwise.

Appellee cites *International Shoe Co. v. Washington*, 326 U.S. 310, 66 S. Ct. 154, 90 L. Ed. 95 (1945), and *McGee v. International Life Insurance Co.*, 355 U.S. 220, 78 S. Ct. 199, 2 L. Ed. 2d 223 (1957), in support of his contention. In each of these cases it is clear that jurisdiction was found on the basis of acts or activities occurring within the state in which jurisdiction was initially asserted and that it was the occurrence of the act or activities which was the basis for this court's decision in each case. The quotation from *McGee v. International Life Insurance Co.*, supra, contained at the top of page 8 of Appellee's Motion points out this proposition succinctly:

"'. . . It is sufficient for purposes of due process that the suit was based on a contract which had substantial connections with that State . . .'"

The opinion of Mr. Chief Justice Stone in *International Shoe Co. v. State of Washington*, supra, points out the basis for the decision in that case just as clearly at page 319 U.S. Reports:

> "But to the extent that a corporation exercises the privilege of conducting activities within a State, it enjoys the benefits and protection of the laws of that State. The exercise of that privilege may give rise to obligations; and, so far as those obligations arise out of or are connected with the activities within the State, a procedure which requires the corporation to respond to a suit brought to enforce them can, in most instances, hardly be said to be undue."

The basis for these two decisions is consistent with the basis of other decisions of this Court sustaining jurisdiction over the person of an absent Defendant by substituted service of process. In the present case, it is true that Appellants were citizens and residents, and had complied with the licensing requirements, of the Commonwealth of Pennsylvania. The narrow question on appeal, however, is whether the accident in suit occurred within the Commonwealth of Pennsylvania. Some recent lower court decisions have indicated that citizenship of a defendant is significant in determining whether or not jurisdiction may be acquired by substituted service but in each of these cases the act or activity alleged as a basis of the suit has occurred within the forum state.

In *Owens v. Superior Court of Los Angeles County*, 52 Cal. 2d 822, 345 P. 2d 921, 78 A.L.R. 2d 388 (1959), it was held that the California courts might acquire personal jurisdiction over the defendant by extra territorial service where it appeared that the defendant was a resident and citizen of the state at the time the accident occurred but had removed from the state prior to the institution of suit. Significantly, however, the basis for the action was a tort which had occurred within California. There, the California Supreme Court interpreted *Hanson v. Denckla*, 357 U.S. 235, 78 S. Ct. 1228, 2 L. Ed. 2d 1283 (1958), cited in Appellants' Jurisdictional Statement at pages 30 and 31, as not departing from the minimum contact test but pointing out that defendant, in that suit, *had done no act in the state* which would justify assumption of jurisdiction over it.

Illinois has apparently enacted a statute providing for the acquisition of jurisdiction over nonresidents based on the "commission of a tortious act within this State" and has sustained the validity of that statute in *Nelson v. Miller*, 11 Ill. 2d 378, 143 N.E. 2d 673 (1957).

The most recently reported case in point would appear to be *DeFazio v. Wright*, 229 F. Supp. 111 (D.C. N.J. 1964), sustaining the use of extraterritorial service pursuant to a New Jersey rule of court where the defendants, although residents and citizens of New Jersey at the time the cause of action arose, had subsequently moved to Pennsylvania and the act complained of had occurred within New Jersey. The Court there relied on *Bluff Creek Oil Co. v. Green*, 257 F. 2d 83 (5 Cir. 1958); *Nelson v. Miller*, supra; *Fraser v. Columbia Transportation Co.*, 158 F. Supp. 858 (D.C. Ill. 1957); and *Owens v. Superior Court*

of Los Angeles County, supra, in sustaining its jurisdiction. In all of these cases it was an act or conduct occurring within the forum state which moved the courts involved to sustain their jurisdiction over the defendants.

Appellee's contention that there are, in the present case, sufficient contacts with the Commonwealth of Pennsylvania to sustain the trial court's jurisdiction over the persons of Appellants is dependent upon a finding that the act complained of occurred within Pennsylvania. Rather than being persuasive that this court should not review the question presented, the argument avoids the issue entirely.

B. The Fact That the Accident in Suit Occurred Upon Land Ceded to the United States Is Controlling

Appellee, by his Motion To Dismiss the Appeal or, in the Alternative, To Affirm the Judgment of the Supreme Court of Pennsylvania, asserts that an accident which occurs upon a military reservation over which exclusive jurisdiction has been ceded to the Federal Government occurs in the state within which the military reservation lies and, in support of that argument, appears to rely almost solely on *Knott v. Farming*, 163 F. 2d 199 (4th Cir., 1947); certiorari denied, 332 U.S. 809, 68 S. Ct. 111, 92 L. Ed. 387, rehearing denied, 332 U.S. 826, 68 S. Ct. 164, 92 L. Ed. 401. There a nonresident of Virginia brought suit against a corporation, also a nonresident of Virginia, in a United States District Court of Virginia and obtained service upon the Defendant by service upon the Secretary

of the Commonwealth of Virginia. Such service was pursuant to a Virginia statute applicable to corporations doing business within Virginia but which had not registered to do business nor appointed an agent for the service of process. The Circuit Court was there concerned with whether the Defendant Corporation had waived federal venue provisions by doing business within the Commonwealth of Virginia and, as an initial determination, held that doing business within a federal reservation over which jurisdiction had been ceded to the United States was, in fact, doing business within Virginia.

The *Knott* decision standing by itself may be authority for Appellee's contention. However, that decision does not stand alone.

Two years after the *Knott* decision, the Virginia Supreme Court made clear *its* position on the question of causes of action arising within federal reservations. *Hercules Powder Company v. Reuben*, 188 Va. 694, 51 S.E. 2d 149 (1949), involved a suit by an employee of the powder company for breach of it employment contract. The powder company, a Delaware Corporation with no office or chief officer in Pulaski County, Virginia operated an ordinance plant on the federal reservation at New River, an area over which the Commonwealth of Virginia had ceded to the United States exclusive jurisdiction but had retained concurrent jurisdiction for the service of civil and criminal process. In this case the powder company had expressly appointed the Secretary of the Commonwealth of Virginia as a statutory agent to accept service of process.

The lower Court rejected a plea in abatement questioning the jurisdiction of the Court but was reversed by

the Supreme Court of Virginia. Justice Gregory, speaking for the Court, said at 51 S.E. 2d 150:

> "We think that the plea in abatement was in proper form and that it should have been sustained by the trial court for the reason that the cause of action, if any, did not arise in Pulaski County but arose on a federal reservation over which the United States had exclusive jurisdiction.
>
> . . . . . .
>
> "The question of whether or not the Commonwealth of Virginia has any jurisdiction over territory of this kind has been settled by our decisions. See Foley v. Shriver, 81 Va. 568; Bank of Phoebus v. Byrum, 119 Va. 708, 67 S.E. 349, 27 L.R.A. N.S. 436, 135 Am. St. Rep. 953 and Buttery v. Robbins, 177 Va. 368, 14 S.E. 2d 344."

and, at page 151, said further:

> "The fact that the Commonwealth of Virginia retained in the deed concurrent jurisdiction with the United States to serve civil and criminal process in no way lessens the exclusive jurisdiction of the United States in the territory in question."

Quoting from *Western Union Telegraph Company v. Chiles*, 214 U.S. 274, 278, 29 S. Ct. 633, 53 L. Ed. 994 (1909), the Court continued:

> "It is apparent from the history of the establishment of the Norfolk Navy Yard, already given, that it is one of the places where the Congress possesses exclusive legislative power. It follows that the laws of the State of Virginia, with the exception referred

> to in the Acts of Assembly, cannot be allowed any operation or effect within the limits of the yard. The exclusive power of legislation necessarily includes the exclusive jurisdiction.'"

The Circuit Court for the 4th Circuit is not only in conflict with the Supreme Court of Virginia on this narrow issue, but is also in conflict with the Supreme Court of Maine and with the Federal District Court for the Northern District of Maine. In *Brooks Hardware Co. v. Greer*, 111 Me. 78, 87 A. 889, 46 L.R.A., N.S. 301 (1913), the Supreme Judicial Court of Maine held that a disabled veterans' home, established by Act of Congress on lands ceded to the United States upon which it operated a branch, did not have a place of business in the state. In *Berube v. White Plains Iron Works, Inc.*, 211 F. Supp. 457 (D.C. N.D. Me. 1962), it was held that the Defendant, a New York Corporation engaged as a subcontractor on Loring Air Force Base in Maine, was not doing business within the state of Maine so as to sustain service of process upon the Secretary of State in a suit based upon personal injuries claimed by the Plaintiff to have been sustained at the Air Force Base.

The Pennsylvania Supreme Court has held that the words "within the Commonwealth" in the Pennsylvania Nonresident Motorists Act, Act of May 14, 1929, P. L. 1721, as amended, 75 P.S. 2001 et seq., were intended to encompass all the territory within the geographical borders of Pennsylvania. Whether such was the intention of the Pennsylvania Legislature is not determinative. The Legislature saw fit, in 1937, to cede to the United States exclusive jurisdiction over the land now encompassed by the New Cumberland General Depot. The refusal of the

Pennsylvania Supreme Court, and of Appellee, to recognize the paramount right acquired by the United States and the consequences which logically flow from that paramount right requires review by this Court. Jurisdiction is inextricably entwined with power. When the Commonwealth ceded its power over the land in question, it also divested itself of its former right to assert its jurisdiction based upon events occurring within the ceded territory. Its attempt now to assert jurisdiction, if successful, will deprive Appellants of due process.

II. CONCLUSION

It is respectfully submitted that the question presented to your Honorable Court is so substantial as to require plenary consideration, with briefs on the merits and oral argument for its resolution, and that Appellee's Motion To Dismiss the Appeal or, in the Alternative, To Affirm the Judgment of the Supreme Court of Pennsylvania should be denied.

Respectfully submitted,

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